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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,939	10/10/2003	Frank S. Maggio	066-0003	3891
67413	7590	08/26/2010	EXAMINER	
PRASS LLP			CHORNESKY, ADAM B	
2661 Riva Road				
Bldg. 1000, Suite 1044			ART UNIT	PAPER NUMBER
ANNAPOLIS, MD 21401			3688	
			MAIL DATE	DELIVERY MODE
			08/26/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Prass LLP
2661 Riva Road
Bldg. 1000, Suite 1044
Annapolis, MD 21401

In re Application of:

MAGGIO, FRANK S	:	DECISION ON PETITION
Application No.: 10/683,939	:	TO REQUEST RECLASSIFY
Filed: January 24, 2007	:	AND TRANSFER APPLICATION
For: METHOD AND SYSTEM FOR	:	
CHARACTERIZING AUDIENCES,	:	
INCLUDING AS VENUE AND	:	
SYSTEM TARGETED (VAST) RATINGS	:	

Applicant's petition filed under 37 CFR 1.182, on November 4, 2009 to request a reclassify and transfer of this application to another Art Unit that the applicant believes the application properly belongs. This petition, dealing with the classification of an application, is treated as a petition for supervisory review under 37 CFR 1.181.

This petition is **DISMISSED as moot.**

Applicant's petition sets forth, in the Background section, his experience with an earlier filed application that had ultimately matured into a patent. Despite the issuance of his prior application into a patent, applicant felt that there was a philosophy held by the examiner handling the case to avoid issuing patents. Applicant goes on to say that during the subsequent examination of several of his other applications he has come to the conclusion that many Art Units in the Business Methods area actively try to avoid issuing patents based upon his belief of their low allowance rate.

Applicant further alleges that device oriented applications have been improperly classified in Business Methods Art Units. Applicant requests that the instant application be transferred from Art Unit 3688 (it currently assigned to Art Unit 3688) to Art Unit 2612. Applicant believes that the subject-matter of this application, being device oriented media ratings technology, is more properly examinable in TC 2600.

Initially, it is unclear what "device oriented" is actually defined as. It appears that applicant uses the term "device oriented" to reference one of the categories of the claimed subject matter: article claim. A review of the claims shows claims 79-111 and 123-131 are considered article claims, and claims 112-122, 132-142 are method of using claims. The classification and assignment of an application is governed by MPEP 903.08(e) which states that "*An application will be assigned as follows:*

(A) *The assignment of nonprovisional applications follows, as far as possible, the rules or principles governing the classification of patents. Applications are generally assigned on the basis of where the application would have an original classification, if the claims it contains were in a patent."*

While applications may be classified in multiple related classes/subclasses, the Original classification is determined by the following factors:

1) Hierarchy of categories of subject matter (e.g. method of using claims determine classification over article claims).

2) Superiority of types of subject matter (e.g. chemical subject matter controls over electrical subject matter).

3) Class superiority. All classes in the U.S. Classification system are assigned a relative superiority. This listing of all classes arranged by their relative superiority can be found on the USPTO website on the Classification Home Page under the link entitled "Classes Within the US Classification System Arranged by Related Subjects."

Based on the criteria above, the current Original classification of class 705 and subclass 14 is deemed to be appropriate. Applicant's arguments regarding the suggested classification have been considered but are not deemed to be persuasive. Furthermore, misclassified applications do occasionally occur and transfers between SPEs to the correct Art Unit take place prior to any examination on the merits taking place. However, this does not mean that an applicant be allowed to "cherry- pick" which area of the Office an application should be classified or assigned in order to maximize the odds for allowance based upon a perceived bias for or against allowance in any particular areas. As a result, applicant's request to transfer this application to class 340 in Art Unit 2612 is **DISMISSED as moot** in view of the fact that this application is now abandoned for applicant's failure to timely file a proper reply to the Office letter mailed on 01 September 2009.

It is further noted that applicant has filed this petition even though there is currently an Attorney of record in this case. The-Office will not engage in Dual Correspondence with an applicant and a patent practitioner. Accordingly, applicant is required to conduct all future correspondence with this Office through the attorney of record. In response to applicant's request to transfer two other applications 11/657,384 and 11/712,861, this request is denied as each application must be examined on its own merits so a petition must be filed for each application.

Any questions or comments with respect to this decision should be forwarded to Supervisory Patent Examiner Lynda Jasmin at (571) 272-6782.



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